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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

L.H., an Infant,¹ by DAYANA HALMAN, his
Parent and Natural Guardian, and DAYANA
HALMAN, Individually,

Plaintiffs,

-against-

SHARON BENATTABOU, M.D., SHUCHIN
SHUKLA, M.D., REBECCA WILLIAMS, M.D.,
ANNA FLATTAU, M.D., and MONTEFIORE
MEDICAL CENTER,

Defendants.

NOTICE OF REMOVAL

From the Supreme Court of the
State of New York, County of
Bronx, Index No. 21393/2012

Defendant Montefiore Medical Center (“Montefiore”) and three of its employees, Sharon Benattabou Phillips (“Phillips”), Rebecca Williams (“Williams”) and Anna Flattau (“Flattau”) (collectively, the “Federal Defendants”), by their attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows.

¹ The full name of plaintiff L.H. has been withheld pursuant to Rule 5.2 of the Federal Rules of Civil Procedure.

1. The Federal Defendants are named as defendants in an action filed in the Supreme Court of the State of New York, County of Bronx, Index No. 21393/2012. A copy of the Complaint is attached hereto as Exhibit A.

2. Plaintiffs L.H. an Infant (the “Infant”), and Dayana Halman (“Halman”) (collectively, “Plaintiffs”), allege that the Federal Defendants were negligent in the medical treatment provided to the Infant from January 2010 to September 2011, *see* Ex. A, Cmpl. ¶¶ 22-23; and negligently failed to obtain informed consent in connection with medical care provided to the Infant, *id.* ¶¶ 28-30. Plaintiffs further allege that Montefiore negligently failed to hire and supervise qualified employees who were responsible for providing medical care to the Infant. *Id.* ¶¶ 34-36. According to Plaintiffs, the above purported negligence caused injury to the Infant. *Id.* ¶¶ 25, 31, 37. In addition, Halman asserts that the Federal Defendants are liable for her supposed loss of services from the Infant as a result of the above alleged negligence. *Id.* ¶ 41. Plaintiffs seek unspecified damages in excess of the jurisdictional limits of all lower New York State courts. *Id.* ¶¶ 26, 32, 38, 42.

3. At all times relevant to this Notice of Removal, Phillips, Williams and Flattau, were employees of Montefiore. *See* Ex. B (Certification of Geoffrey S. Berman, United States Attorney for the Southern District of New York, dated April 23, 2018).

4. Pursuant to the Public Health Service Act, as amended by the Federally Supported Health Centers Assistance Act of 1995, 42 U.S.C. § 201 *et seq.*, from January 2010 through December 2012, Montefiore and some of its employees (including Phillips, Williams and Flattau) were deemed to be employees of the United States for purposes of civil actions seeking damages for personal injury resulting from the medical care provided to L.H. at the Family Health Center at issue in this action. *See* 42 U.S.C. § 233(g)-(n).

5. The Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680, provides the exclusive remedy with respect to Plaintiffs’ claims against the Federal Defendants. *See* 42 U.S.C. § 233(a).

6. This action may be removed to this Court pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2) because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against, *inter alia*, employees of the United States acting within the scope of their employment. As set forth in Exhibit B, Montefiore, Phillips, Williams and Flattau were employees of the United States and were acting within the scope of their employment for purposes of Plaintiffs’ claims against the Federal Defendants.

7. All other defendants who have been properly served are not required to consent to the removal of this case to federal court because the Federal Defendants have a statutory right to remove under 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2).

8. The Federal Defendants will promptly file a copy of this Notice of Removal with the Clerk of Court, Supreme Court of the State of New York, County of Bronx.

9. The submission of this Notice of Removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Federal Defendants. This Office makes a limited appearance on behalf of the Federal Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to any defendant, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
April 27, 2018

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